

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: WALKER et al.

Serial No.: 10/770,231

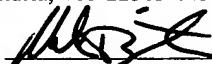
Filing Date: February 2, 2004

For: METHOD AND APPARATUS FOR
DIRECTING A GAME IN
ACCORDANCE WITH SPEED OF PLAY

) Examiner: Not Yet Assigned
) Group Art Unit: Not Yet Assigned
) Attorney Docket No: 03-063
) Customer No.: 22927
)
)

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Priority mail in an envelope with sufficient postage and addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: 10/25/04 By: 
Michael D. Brinton

MS Petitions
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. 1.47(a)
TO REQUEST ACCEPTANCE OF NATIONAL APPLICATION
WITHOUT PARTICIPATION OF ONE OR MORE INVENTORS**

Sir:

Applicants request acceptance of the present application without participation of one or more inventors, which inventor(s) have either refused to join in the application or cannot be found or reached after diligent effort.

Relevant facts and proof

Applicants filed the present patent application on February 2, 2004. No Oath or Declaration was filed with the application on February 2, 2004.

10/28/2004 AWONDAF1 00000056 500271 10770231

02 FC:1460 130.00 DA

03-063 PT 10.25.04

Thomas Sparico, an inventor on the present application, is no longer employed by Walker Digital. His last known address was: 525 East 72nd Street, Apartment 23F, New York, NY 10021.

Applicants have previously attempted to contact Thomas Sparco via mail, to no avail. On October 4, 2001, October 23, 2001, November 20, 2001, February 21, 2002, March 12, 2002, April 10, 2002, May 17, 2002, October 17, 2002 and May 6, 2003, Applicants prepared and sent packages via certified, return receipt mail to Thomas Sparco at what was then his last known address: 525 East 72nd Street, Apartment 23F, New York, NY 10021. Each package contained the following: 1) Cover letter 2) Copy of Application with Formal Drawings; 3) Combined Declaration and Power of Attorney; 4) Assignment; and 5) Self addressed stamped envelope for return to Applicants. The cover letters included instructions to sign certain documents and return the same to Applicants. The cover letters also included a contact telephone number, should he require assistance. Thomas Sparco did not return any of the documents, nor did he contact Applicants in any way. *Please see AFFIDAVIT OF MICHAEL D. BRINTON.*

Applicants have previously attempted to contact Thomas Sparco via telephone, to no avail. On October 12, 2001, November 28, 2001, December 10, 2001, December 17, 2001, January 4, 2002, January 23, 2002, January 31, 2002, February 26, 2002, March 19, 2002, March 26, 2002, April 4, 2002, April 15, 2002, April 25, 2002, May 30, 2002, June 3, 2002, June 19, 2002, July 10, 2002 and August 8, 2002, Applicants called and left detailed telephone messages for Thomas Sparco. Each time Applicants called, it was requested that Thomas Sparco return the call to follow up regarding documents mailed to his home. Applicants provided a contact telephone number in each of these messages. Thomas Sparco did not return any of these calls or contact Applicants in any way. *Please see AFFIDAVIT OF MICHAEL D. BRINTON and AFFIDAVIT OF STEVEN M. SANTISI.*

On June 27, 2002 in a telephone conversation with Thomas Sparco, he indicated that he was unwilling to be cooperative in executing documents for Applicants unless he was paid \$10,000.00 for his signature. *Please see AFFIDAVIT OF STEVEN M. SANTISI.*

During the month of July, 2002, Applicants had several phone conversations with Thomas Sparico in which he indicated to Applicants that he was unwilling to cooperate in reading, reviewing or signing any documents pertaining to Walker Digital cases on which he is a named inventor. *Please see AFFIDAVIT OF JOSE A. SUAREZ.*

On October 21, 2002, Applicants left a telephone message for Thomas Sparico requesting that he call Applicants to confirm receipt of an Application, Declaration and Power of Attorney, and Assignment mailed to his home on October 17, 2002. Applicants provided a contact telephone number in the message. *Please see AFFIDAVIT OF MICHAEL D. BRINTON.*

On October 21, 2002, Thomas Sparico returned Applicants' call. He indicated to Applicants that he was unwilling to cooperate in reading, reviewing or signing any documents pertaining to Walker Digital cases on which he is a named inventor. He asked Applicants to stop sending to his home packages containing Walker Digital Applications and other documents requiring his signature. *Please see AFFIDAVIT OF MICHAEL D. BRINTON.*

On May 29, 2003, in a telephone conversation with Applicants, Thomas Sparico unequivocally indicated that he would not sign any documents for Walker Digital now, or in the future. Further, he told Applicants to stop sending packages to his home and to stop calling him. He reminded Applicants that his refusal to cooperate with Walker Digital had already been established one year prior in a series of telephone calls with Michael D. Brinton, Jose A. Suarez and Steven M. Santisi. *Please see AFFIDAVIT OF MICHAEL D. BRINTON.*

Last known address(es) of the non-signing inventor(s)

The latest address of Thomas Sparico is:

525 East 72nd Street
Apartment 23F
New York, NY 10021

Because on November 20, 2001, in a telephone conversation with Applicants, Thomas Sparico confirmed his last known address of 525 East 72nd Street, Apartment 23F, New York, NY 10021 as correct, Applicants have no reason to believe that this same address to which correspondence

pertaining to the present Application has been mailed is incorrect. *Please see AFFIDAVIT OF MICHAEL BRINTON.*

Oath or Declaration

Applicants have filed an oath or declaration signed by all the available joint inventors with the signature block of the non-signing inventor(s) left blank.

Petition Fee

Please charge \$130.00 for this petition to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Petition, or credit any overpayment to Deposit Account No. 50-0271.

If an extension of time is required, or if an additional extension of time is required in addition to that requested in a petition for an extension of time, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,

October 25, 2004



Magdalena M. Fincham
Attorney for Applicants
Registration No. 46,085
Mfincham@walkerdigital.com
(203) 461-7041/voice
(203) 461-7300/fax

AFFIDAVIT OF MICHAEL D. BRINTON

I am employed at Walker Digital Management, LLC as a patent paralegal.

On October 4, 2001, October 23, 2001, November 20, 2001, February 21, 2002, March 12, 2002, April 10, 2002, May 17, 2002 and May 6, 2003, I prepared and sent via certified, return receipt mail to Thomas Sparico at what was then his last known address: 525 East 72nd Street, Apartment 23F, New York, NY 10021, packages containing the following documents: 1) Cover letter 2) Copy of Application with Formal Drawings; 3) Combined Declaration and Power of Attorney; 4) Assignment; and 5) Self addressed stamped envelope for return to me. The cover letters included instructions to sign certain documents and return the same to me. The cover letters also included my telephone number, should he require assistance. He did not return any of these documents to me, nor did he contact me in any way.

On November 20, 2001, I called Thomas Sparico and spoke to him on the telephone. He confirmed his home address of 525 East 72nd Street, Apartment 23F, New York, NY 10021 as being correct.

On October 12, 2001, November 28, 2001, December 10, 2001, December 17, 2001, January 4, 2002, January 23, 2002, January 31, 2002, February 26, 2002, March 19, 2002, March 26, 2002, April 4, 2002, April 15, 2002, April 25, 2002, May 30, 2002, July 10, 2002, August 8, 2002 and May 19, 2003, I called and left detailed telephone messages for Thomas Sparico. Each time I called, I requested that he call me to follow up regarding documents mailed to his home. I provided my telephone number in each of these messages. Thomas Sparico did not return any of my calls.

On October 17, 2002, I prepared and sent via certified, return receipt mail to Thomas Sparico at what was then his last known address: 525 East 72nd Street, Apartment 23F, New York, NY 10021, packages containing the following documents: 1) Cover letter 2) Copy of Application with Formal Drawings; 3) Combined Declaration and Power of Attorney; 4) Assignment; and 5) Self addressed stamped envelope for return to Applicants. The cover letters included instructions to sign certain documents and return the same to Applicants. The cover letters also included a contact telephone number, should he require assistance.

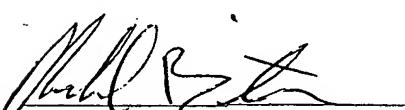
On October 21, 2002, I left a telephone message for Thomas Sparico requesting that he call me to confirm receipt of an application, Declaration and Power of Attorney and Assignment mailed to his home on October 17, 2002. I provided my telephone number in the message.

On October 21, 2002, Thomas Sparico returned my call of that same day. He told me that he was unwilling to cooperate and sign the Declaration and Power of Attorney or Assignment mailed to his home on October 17, 2002. He further indicated to me that he is unwilling to cooperate in reading, reviewing or signing any documents pertaining to

Walker Digital cases on which he is a named inventor. He asked me to stop sending to his home packages containing Walker Digital applications and other documents requiring his signature.

On May 19, 2003, the package (containing an application, Declaration and Power of Attorney and Assignment) mailed to Thomas Sparico's home on May 6, 2003 was returned to me by U.S. Postal Services and stamped "Returned to Sender".

On May 29, 2003, I placed a telephone call to Thomas Sparico at his last known telephone number of (914) 441-2278. In our conversation, Thomas Sparico forcibly and explicitly told me that he would not sign any documents for Walker Digital now, or in the future. Further, he told me to stop sending packages to his home and to stop calling him. He reminded me that his refusal to cooperate had already been established last year in a series of telephone calls with Jose Suarez, Steve Santisi and I.



Michael D. Brinton
June 2, 2003

Subscribed and Sworn to before me, a Notary Public, in and for County of Fairfield
and State of Connecticut, this 21st day of

June 2003
M.C. Brinton

My Commission Expires Aug. 31, 2007

PATENT

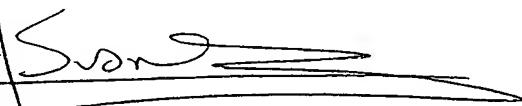
COPY

Application Serial No.: 09/879,299
Attorney Docket No.: 01-024

AFFIDAVIT OF JOSE A. SUAREZ

I am employed by Walker Digital, LLC as Chief Operating Officer.

I had several telephone conversations with Thomas Sparico during the month of July, 2002. He indicated to me that he is unwilling to cooperate in reading, reviewing or signing any documents pertaining to Walker Digital cases on which he is a named inventor.


Jose A. Suarez
October 22, 2002

Subscribed and sworn to before me
this 22nd day of October

Michael D. Brinton
NOTARY PUBLIC
DATE COMMISSION EXPIRES 1/31/07

MICHAEL D. BRINTON
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2007

AFFIDAVIT OF STEVEN M. SANTISI

I am employed as Associate Chief Counsel of Intellectual Property at Walker Digital Management, LLC.

On June 3, 2002 and on June 19, 2002, I attempted to reach Thomas Sparico via telephone. I left telephone messages requesting that he call me. I provided my telephone number in these messages. Thomas Sparico did not return my calls.

On June 27, 2002 Thomas Sparico was reached by telephone and he indicated that he was unwilling to be cooperative unless he was paid \$10,000.00 for his signature.



Steven M. Santisi
August 9, 2002

Subscribed and sworn to before me
this 9th day of August 2002
Michael Brinton
NOTARY PUBLIC
DATE COMMISSION EXPIRES 1/31/07

MICHAEL D. BRINTON
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2007